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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY _____

DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

LAURA MOEURN,

Appellant.

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FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR GRAYS HARBOR COUNTY

BRIEF OF APPELLANT

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A. SUMMARY OF ARGUMENT

Laura Moeurn appeals his conviction of second degree assault, with a deadly weapon enhancement. Mr. Moeurn argues the State failed to prove beyond a reasonable doubt that he committed the assault. Further, he contends that the deputy prosecutor's prejudicial misconduct in closing argument, fundamentally misstating the State's burden of proof, was intended to and did cause the jury to convict him in the absence of sufficient evidence. Finally, Mr. Moeurn contends the trial court miscalculated his offender score.

B. ASSIGNMENTS OF ERROR

1. Mr. Moeurn's conviction for second degree assault in the absence of sufficient evidence violates the Fourteenth Amendment's Due Process Clause.

2. Prosecutorial misconduct deprived Mr. Moeurn his right to a fair trial in violation of the Fourteenth Amendment's Due Process Clause

3. Mr. Moeurn's sentence is facially invalid based on the improper inclusion of a washed out prior conviction in the offender score.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the government prove a defendant committed the charged offense beyond a reasonable doubt. Where the evidence in the light most favorable to the State establishes that an assault was committed but creates, and leaves unresolved, substantial doubt the Mr. Moeurn committed the assault, does Mr. Moeurn's conviction deprive him of due process?

2. The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees an individual a fair trial. Where a prosecutor engages in misconduct by misstating the law, the defendant is denied a fair trial. Did the deputy prosecutor's misstatement of the law of reasonable doubt and the State's burden of proof deny Mr. Mouern a fair trial?

3. A court acts without authority when imposing a sentence based on an offense that washed out because the requisite period of time passed without further criminal convictions. In the case at bar, the court used a conviction for a 1995 Class C juvenile offense when more five years elapsed prior to the current offense without any additional criminal convictions. Did the court unlawfully sentence Mr. Moeurn based upon a washed out prior conviction?

D. STATEMENT OF THE CASE

On January 13, 2007, Laura Moeurn and several friends went to the Captain's Corner bar in Aberdeen to celebrate the birthday of Julie Keov. RP 162-64. While they were enjoying their evening, one of their group, Kim Chum, became involved in a disagreement with another of the bar's patrons, Clayton Wenger. RP 106, 192, 213. After exchanging words, and perhaps shoves, Mr. Chum left the bar with Mr. Moeurn and the others in their group. Mr. Wegner, too, left the bar along with Steven Vetter and Cody Ross, who had agreed to drive Mr. Wenger home from the bar that night. RP 91, 107.

Mr. Ross described the person who had argued with Mr. Wenger inside the bar as an Asian male wearing a red shirt and red hat. RP 93. Mr. Moeurn is an Asian and was wearing a red shirt and black hat. RP 125-26 Kim Chum is also an Asian male and was wearing a red hat and red shirt RP 205, 218, 233. At least one other Asian male, Dara Phin, was with the group that evening.

The groups encountered one another again in the alley behind the bar and become involved in a fight. RP 91. According to Mr. Ross and Mr. Wenger, the individual with whom Mr. Wenger had argued inside struck Mr. Wenger in the back of the head with a

board. RP 90, 95. RP 106-07. Crystal Barnett called police when the fight began, and subsequently identified Mr. Moeurn as the person who struck Mr. Wenger. RP 25. Several individuals who had been with Mr. Moeurn and Mr. Chum that night testified Mr. Chum was the person who struck Mr. Wenger. RP 169, 197, 217-18.

The State charged Mr. Moeurn with second degree assault with a deadly weapon enhancement. CP 1-2. A jury convicted him as charged. CP 16.

E. ARGUMENT

1. THE STATE FAILED TO OFFER PROOF
BEYOND A REASONABLE DOUBT THAT
MR. MOEURN COMMITTED THE CRIME
CHARGED

a. Due process requires the State prove each element of the offense beyond a reasonable doubt. In a criminal prosecution, the Fourteenth Amendment Due Process Clause requires the State prove each essential element of the crime charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). Additionally, the identity of a criminal defendant and his presence at

the scene of a crime must be proven beyond a reasonable doubt. State v. Thomson, 70 Wn.App. 200, 211, 852 P.2d 1104 (1993), review denied, 123 Wn.2d 877 (1994). Evidence is sufficient only if, in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

b. The State did not prove beyond a reasonable doubt that Mr. Moeurn was the individual who committed the assault. Every witness testified that the person who struck Mr. Wenger was the person with whom he had argued inside the bar. RP 90, 95, 106-07, 164, 169, 192, 197. Thus, the only dispute was who that person was.

A number of witnesses who knew both Mr. Moeurn and Mr. Chum testified Mr. Chum was the one who argued with Mr. Wenger inside the bar, that he along with Dara Phin fought with Mr. Wenger in the alley, and that Mr. Chum hit Mr. Wenger with a board. These witnesses described Mr. Chum as wearing a red shirt and red hat that evening. RP 173, 205, 233. Each of these witnesses described Mr. Moeurn as trying to get his two acquaintances into the car. RP 195, 215. Ms. Barnett recalled seeing an individual

trying to get others into the car, only to have them run back into the fight. RP 64. These witnesses testified that Mr. Chum and Mr. Phin quickly fled the scene. RP 169-70, 218.

Mr. Wenger was unable to describe the person who hit him beyond saying he was wearing a red shirt, and that it was the same individual he had argued with inside the bar. RP 106-07. When shown a picture of Mr. Chum and asked if that was the person who hit him Mr. Wenger responded "I don't know." RP 109.

Mr. Vetter, who testified that although he was close enough to Mr. Wenger to hear the board "go by my ear" nonetheless, was unable to clearly see the face of the person who swung the board. RP 79-80. Mr. Vetter testified the person was wearing dark jeans and a sweatshirt with long red and white stripes. RP 80, 82 When police officers arrived at the scene, Mr. Vetter identified Mr. Moeurn as the person who assaulted Mr. Wenger. At trial, Mr. Vetter explained "there was a couple of people that looked alike" an apparent reference to the number of Asian males present in the alley. RP 84. Mr. Vetter further explained, with a noticeable lack of conviction, that he identified Mr. Moeurn because

he was pretty well at that time – be about the same – that size and the color of the jeans, and he was – the

clothing that he was wearing that matched him – the description that I gave the officer.

RP 84-85.

Mr. Ross testified the assailant wore a red hat and red shirt, RP 93, a description which matched Mr. Chum, not Mr. Moeurn. RP 205, 218, 233. Mr. Ross testified the person with whom Mr. Wenger had argued inside was the person who struck him with the board, again matching the testimony of other witnesses describing Mr. Chum's activities that night.

When, in the weeks following the incident, he was shown a photographic montage containing a picture of Mr. Moeurn, Mr. Ross identified someone else. RP 146. During trial Mr. Ross was shown a photograph of Mr. Chum, Exhibit 11, and identified him as the person who struck Mr. Wegner, apparently oblivious to the fact that Exhibit 11 was not a picture of Mr. Moeurn. RP 96. Despite the fact that he had at least twice identified someone else as the assailant Mr. Ross maintained he was 95% certain that Mr. Moeurn was the person who hit Mr. Wenger. RP 93.

Thus, the only descriptive features Mr. Wenger, Mr. Vetter, and Mr. Ross provided were of an Asian male wearing red, with Mr. Ross adding that he wore a red hat as well.

Ms. Barnett testified that after striking Mr. Wenger the person carrying the board walked past her house, and stated he did not return. RP 49. Yet even Mr. Vetter and Mr. Ross testified Mr. Moeurn never left the scene. By contrast, there was evidence that Mr. Chum fled. RP 169. After police arrived, Ms. Barnett identified Mr. Moeurn as he sat in the back of a patrol car with an officer shining a flashlight on him. RP 25. Despite the suggestibility of such an identification procedure, Ms. Barnett allowed she was only 75% certain that Mr. Moeurn was the person who assaulted Mr. Wenger. RP 75

The State did not prove beyond a reasonable doubt that Mr. Moeurn committed the assault in this case. In the light most favorable to the State, the evidence established an Asian male wearing a red shirt and red hat struck Mr. Wenger. In the light most favorable to the State, Mr. Moeurn was wearing a black hat that evening. In the light most favorable to the State, Mr. Moeurn was the assailant to a 75% degree of certainty to a neutral observer. In the light most favorable to the State, Mr. Moeurn was the assailant to a 95% degree of certainty to a biased observer who identified someone else both during and before trial. Viewing the evidence in the light most favorable to the State a rational trier of fact could not

find beyond a reasonable doubt Mr. Moeurn committed the assault. To conclude otherwise would require a degree of certainty that even the State's witnesses did not express.

c. The court must reverse Mr. Moeurn's conviction.

The Fifth Amendment's Double Jeopardy Clause bars retrial of a case where the State fails to prove the crime charged. Jackson, 443 U.S. at 319; State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Because the State failed to prove he committed the assault, the Court must reverse Mr. Moeurn's conviction and dismiss the charge.

2. PROSECUTORIAL MISCONDUCT
DEPRIVED MR. MOEURN A FAIR TRIAL

a. Prosecutorial misconduct deprives a defendant his due process right to a fair trial. A prosecuting attorney is the representative of the sovereign and the community; therefore it is the prosecutor's duty to see that justice is done. Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1934). This duty includes an obligation to prosecute a defendant impartially and to seek a verdict free from prejudice and based upon reason. State v. Charlton, 90 Wn.2d 657, 664, 585 P.2d 142 (1978).

Prosecutorial misconduct may deprive a defendant of a fair trial, and only a fair trial is a constitutional trial. Donnelly v. DeChristoforo, 416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974); State v. Davenport, 100 Wn.2d 757, 762, 675 P.2d 1213 (1984). Prosecutorial misconduct which deprives an individual of a fair trial violates the individual's right to due process guaranteed by the Fourteenth Amendment to the United States Constitution. "The touchstone of due process analysis is the fairness of the trial, i.e., did the misconduct prejudice the jury thereby denying the defendant a fair trial guaranteed by the due process clause?" Smith v. Phillips, 455 U.S. 209, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982). Therefore, the ultimate inquiry is not whether the error was harmless or not harmless, but rather whether the impropriety violated the defendant's due process rights to a fair trial. Davenport, 100 Wn.2d at 762. Comments made by a deputy prosecutor constitute misconduct and require reversal where they were improper and substantially likely to affect the verdict. State v. Reed, 102 Wn.2d 140, 145, 684 P.2d 699 (1984).

b. In his closing argument the deputy prosecutor misstated the burden of proof and the law of reasonable doubt.

The Fourteenth Amendment's Due Process Clause requires the

government prove a criminal charge beyond a reasonable doubt.

Winship, 397 U.S. at 364.

The jury was instructed in part

. . . .

Mr. Moeurn has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt. . . .

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

CP 12 (Instruction 2).

The Supreme Court has recently concluded this instruction, specifically the last sentence, fails to properly convey the definition of reasonable doubt and should no longer be used. State v. Bennett, 161 Wn.2d 303, 318, 165 P.3d 1241 (2007). The Court, however, found no constitutional infirmity in the instruction and thus refused to reverse Bennett's conviction, instructing that it should not

be used in subsequent cases. Because Mr. Moeurn's case predates Bennett and because that decision found no constitutional flaw in the instruction, Mr. Moeurn does not challenge Instruction 2.

But the deputy prosecutor's comments in closing argument went beyond even the "abiding belief" language disapproved of in Bennett, instead urging the jury to disregard their doubts altogether.

In closing argument, the deputy prosecutor, discussing Ms. Barnett's testimony, asked the jury "Did the defense attorney give you a reason to doubt?" RP 256-57. The deputy prosecutor told the jury not to become distracted by arguments concerning Ms. Barnett's self-confessed 75% level of certainty in her identification of Mr. Moeurn. The deputy prosecutor told the jury

An abiding belief is one you're going to take out of here. After all the testimony, after all the deliberations, most importantly, in the end you simply still just believe that he's guilty. That's an abiding belief.

RP 257-58. The deputy prosecutor continued:

You're probably wondering how you're going to work this out. This is a situation where you're given two stories and they're mutually exclusive. Both of them can't be true. The defendant or was it Kim? One of these guys hit him. Right now you know what's going on. You have your belief, but you probably have your doubt. And then you are asking yourself, Well does my doubt reach reasonable doubt. As I said before, you don't even have to worry about your doubt. Think

of your duty. What do you believe? Don't ask yourself, am I reasonable? Just say, what do I believe? But also don't worry about this reasonable person thing, this little fiction that lawyers talk about. You are reasonable people. . . . The only thing that matter is what you believe. Just look into your heart and you know what you believe.

RP 262-63.

Whatever an abiding belief is, the concept of reasonable doubt requires it be more than simply a gut feeling as to guilt in the face of doubt. Proof beyond a reasonable doubt is not merely a "little fiction that lawyers talk about," it is a constitutional mandate. "The presumption of innocence is the bedrock upon which the criminal justice system stands." Bennett, 161 Wn.2d at 315. The deputy prosecutor's argument urged the jury to ignore this bedrock requirement.

The deputy prosecutor's argument urged the jury to eliminate the notion of doubt altogether from their deliberations; "you don't even have to worry about your doubt." The argument encouraged jurors to vote for conviction in the face of doubt, so long as they believed; "the only thing that matters is what you believe." As if that was not bad enough, the deputy prosecutor told the jury its their duty to do so.

Continuing on his theme of redefining the constitutional standard, the deputy prosecutor told the jury to ask themselves whether the defense had given them any reason to doubt the accusations against Mr. Moeurn. A deputy prosecutor's argument which claims the defense has failed to present evidence or otherwise create a reasonable doubt unconstitutionally shifts the burden of proof and is contrary to the presumption of innocence. State v. Fleming, 83 Wn.App. 209, 215, 921 P.2d 1018 (1996); review denied, 131 Wn.2d 1018 (1997).

The deputy prosecutor's closing argument plainly misstated the relevant law.

c. The deputy prosecutor's misconduct requires reversal of Mr. Moeurn's conviction. Despite the egregious nature of the misconduct, defense counsel did not object. Thus, this court must determine whether the comments were flagrant and ill intentioned so as to cause and enduring and resulting prejudice. State v. Russell, 125 Wn.2d 24, 86, 882 P.2d 747 (1994).

The State's misconduct was flagrant and ill intentioned. Not only were the deputy prosecutor's comments directly contrary to well-established Washington law, the comments blatantly ignored the jury instructions in this case, specifically Instruction 2.

The deputy prosecutor's comments were not made in response to statements or provocations by defense counsel. Instead, they were made in the context of the deputy prosecutor's efforts to eliminate the substantial doubts created by the State's own evidence. The question of the identity was the critical question before the jury, and there was ample and quite reasonable doubt in the State's proof. Mr. Ross expressed 95% certainty in his identification of Mr. Moeurn, yet he had identified someone else in pretrial montage, and identified Mr. Chum as the assailant at trial. RP 93, 96. The fact that he identified Mr. Chum, pictured in Exhibit 11, as the assailant, under the belief that it was Mr. Moeurn, simply gave rise to more doubt. The deputy prosecutor's comments were an effort to coax the jury to a degree of certainty that Ms. Barnett was unable to express and none of the State's other witnesses maintained.

Trained and experienced prosecutors presumably do not risk appellate reversal of a hard-fought conviction by engaging in improper trial tactics unless the prosecutor feels that those tactics are necessary to sway the jury in a close case.

Fleming, 83 Wn.App. at 215. The deputy prosecutor's comments were intended to circumvent the substantial doubts standing in the way of a conviction.

That prejudice is worsened by the confusing and potentially misleading statement of reasonable doubt in Instruction 2, as recognized by Bennett. In light of the shaky foundation the instruction itself provides, the deputy prosecutor's gross misstatement of the law could not have been cured by pointing the jury back to that instruction.

The resulting prejudice of the State's misconduct was intended and did have a substantial impact on Mr. Moeurn's Fourteenth Amendment right to a fair trial. The only meaningful remedy for these violations is a new trial.

3. THE TRIAL COURT MISCALCULATED MR.
MOEURN'S OFFENDER SCORE BY
INCLUDING A PRIOR OFFENSE

a. The State must prove an individual's criminal history and offender score. Due process requires the State prove an individual's criminal history and offender score by a preponderance of the evidence. State v. Ford, 137 Wn.2d 472, 480-81, 973 P.2d 452 (1999). Where the State fails to offer sufficient evidence such that the record fails to support the criminal history and offender score calculation, the defendant is denied the minimum protections of due process. Id. at 481. The erroneous inclusion of an offense which has "washed out" may be raised for

the first time on appeal, and even where the defendant agreed to its inclusion in his offender score. In re the Personal Restraint Petition of Goodwin, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002).

In Goodwin, the petitioner pleaded guilty and agreed that the state's understanding of his criminal history set out in the plea agreement was "correct and complete." 146 Wn.2d at 864. He later filed a personal restraint petition arguing his sentence was invalid on its face because the criminal history included offenses that had washed out. Id. at 866-67. Goodwin ruled that when the documents used to establish a guilty plea evidence an invalid offender score, the sentence impropriety may be addressed when raised for the first time in an otherwise untimely personal restraint petition. Id. at 867. Because an illegal sentence may not stand, the court must address and rectify the error when it is presented even if the defendant agreed the sentence was correct. Id.

b. The State failed to prove Mr. Moeurn's 1994 offense had not washed out. RCW 9.94A.525(2) provides in relevant part:

. . . . Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and

sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction. . . . This subsection applies to both adult and juvenile prior convictions.

RCW 9.94A.500(1) requires that the sentencing court determine by a preponderance of the evidence the nature and extent of an individual's criminal history.

Importantly, RCW 9.94A.525(2) does not require prior offenses be included in the offender score "unless" they are shown to have washed out. Instead, the statute provides they "shall not be included" if they have washed out. The term "shall" indicates a mandatory duty on the trial court. State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). Thus, as Ford recognized, the State must offer sufficient proof to permit the trial court to determine the prior offenses should be included in the offender score -- proof that the offenses have not washed out.

The statute does not require an offender to spend five or ten consecutive years crime free immediately following release from

the felony, it simply requires that “since the last date of release from confinement” the person has spent five or ten consecutive years. Thus, if at any point prior to the commission of the present offense, a defendant has had five or ten consecutive crime free years, the prior offense will have washed out.

Before a court can include a Class B or Class C felony in a person’s offender score the court must determine the person has not spent ten or five crime-free years from the date of release from confinement to the date of the next offense. RCW 9.94A.525(2). To permit such a determination, the State would have to prove and the trial court must find, at a minimum, the dates of offense, conviction, sentencing, and release from confinement. Moreover, the State would have to prove, and the trial court would have to find, the date of offense for any intervening misdemeanor convictions which may have prevented the listed offenses from washing out.

In the present case, the Statement of Prosecuting Attorney submitted prior to sentencing contended Mr. Moeurn had a 1994 juvenile adjudication for attempted second degree assault, CP 28. The State also contended Mr. Moeurn was convicted of the misdemeanor offense of no valid operator’s license in February

1997. Id. The State did not allege Mr. Moeurn had any additional convictions.

Mr. Moeurn's attorney agreed Mr. Moeurn's criminal history included the 1994 juvenile attempted assault adjudication. RP 297. The deputy prosecutor represented to the court that he and defense counsel agreed that offense should count as two points in Mr. Moeurn's offender score. RP 297-98.

While second degree assault is a Class B felony, former RCW 9A.021(2) (1994),¹ attempted second degree assault is a Class C felony. RCW 9A.28.020(3)(c). Thus, Mr. Moeurn's 1994 offense can only be included if the State established he failed to spend five years in the community without committing a crime. The State failed to do so. The last, and only intervening offense the alleged by the state was a 1997 misdemeanor conviction. The State did not present any sentencing or release information relating to the offense. In absence of such information the State could not meet its burden of proving the 1994 attempted assault had not

¹ Subsequent to Mr. Moeurn's adjudication, RCW 9A.36.021 was amended to make second degree assault with sexual motivation a Class A felony. Laws 2001, 2nd Sp.Sess., ch 12 § 355. Because the sentence is determined by use of the law in effect at the time of sentencing, RCW 9A.345, Mr. Moeurn cites to the 1994 version of the statute. In any event, because Mr. Moeurn's 1994 conviction does not include a finding of sexual motivation, any discussion of which statute applies is unnecessary as under either version Mr. Moeurn's offense is a Class B felony.

washed out. The only information before the court was that nine years and eleven months after he was convicted of a misdemeanor offense, Mr. Moeurn committed the present offense.

Given the nearly ten years between the misdemeanor and the commission of the present offense it is nearly impossible to imagine a scenario in which the 1995 offense, a class C felony, would not wash out. In the absence of any proof or even an allegation of any other intervening offense, the State would have to prove that despite the maximum sentence of 90 days and maximum one-year suspended sentence for the misdemeanor offense, Mr. Moeurn was released from confinement on the misdemeanor within five years of his commission of the present offense. The State offered no such proof.

The State failed to prove Mr. Moeurn's 1995 adjudication should be included in his offender score.

c. This Court must remand Mr. Moeurn's case for resentencing. As in Goodwin, the proper remedy is to remand the case for resentencing using the correct offender score; "0." Goodwin, 146 Wn.2d at 877-78.

F. CONCLUSION

For the reasons above, this Court must reverse Mr.
Moeurn's conviction and sentence.

Respectfully submitted this 13th day of November, 2007.

A handwritten signature in black ink, appearing to read 'Gregory C. Link', is written over a horizontal line.

GREGORY C. LINK – 25228
Washington Appellate Project – 91052
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,
RESPONDENT,
v.
LAURA MOEURN,
APPELLANT.

COA NO. 36299-6-II

DECLARATION OF SERVICE

I, MARIA RILEY, CERTIFY THAT ON THE 13TH DAY OF NOVEMBER, 2007, I CAUSED A TRUE AND CORRECT COPY OF THIS **OPENING BRIEF OF APPELLANT** TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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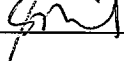
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